

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

STATE OF MISSOURI, ex rel.
Attorney General Chris Koster,
and
The Missouri State Board of
Embalmers and Funeral Directors,

Plaintiffs,

v.

BUESCHER MEMORIAL HOME, INC.,
BARBARA J. BUESCHER,
and
BARBARA BUESCHER D/B/A
BUESCHER MEMORIAL HOME,

Defendants.

FILED

SEP 14 2012

COLE COUNTY
CIRCUIT COURT

Case No. 09AC-CC00654

**ORDER AND JUDGMENT GRANTING PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY JUDGMENT, ENTERING PERMANENT
INJUNCTION AGAINST DEFENDANTS, AND ORDERING COSTS
AND PENALTIES AGAINST DEFENDANTS**

This matter is before the Court on Plaintiffs' Motion for Partial Summary Judgment filed on March 9, 2012. Having reviewed Plaintiffs' motion for partial summary judgment on Count I, subparagraphs a. and b.; Count IV; and Count VI of Plaintiffs' March 24, 2010, First Amended Petition; Defendants' Response; Plaintiffs' Reply, and Defendants' Motion to Quash, and having heard arguments in the matter, for the reasons stated below, Plaintiffs' motion for partial summary judgment is hereby GRANTED

and permanent injunction is entered against defendants, as well as costs and penalties ordered against Defendants.

I. Background

The State filed its original Petition for Preliminary and Permanent Injunction, Restitution, Civil Penalties, and Other Court Orders and its Motion for Temporary Restraining Order against Defendants November 10, 2009, and obtained a temporary restraining order November 13, 2009. Defendants' licenses were also revoked by the Missouri State Board of Embalmers and Funeral Directors November 10, 2009. The parties negotiated a claim form process whereby consumers who paid Defendants money for preneed funeral contracts that had not been performed could cancel and transfer to a new, licensed preneed seller and provider, as the defendants could not perform the contracts without a license and the Defendants had failed to establish proper account(s) for preneed purchasers' funds as required by the Preneed Funeral Contract Act.

Through discovery, the State identified approximately 177 accounts in the name and possession of the Defendants containing consumers' preneed money. An estimated 100 purchasers were already deceased. Another 60 canceled and transferred via the claim form process. Approximately 10 consumers remained that the Attorney General's Office had not been able to contact by the filing of the partial summary judgment motion. Since that

date, the parties determined that three consumers' funeral services were performed by Buescher, and therefore Defendants are entitled to those funds. Seven consumer preneed accounts remain and must be transferred from Defendants' possession immediately to the appropriate preneed seller or provider, consumer's estate, or to the State's Unclaimed Property. The State argued in its Motion for Partial Summary Judgment that the accounts established by the Defendants for preneed funds are not compliant with the Preneed Funeral Contract Act, Chapter 436, RSMo (2000), because they are not trust accounts or joint accounts, or other account allowed under the law.

II. Law and Analysis

Missouri Supreme Court Rule 74.04(c)(2) pertaining to summary judgment motions states, "the response shall support each denial with specific references to the discovery, exhibits or affidavits that demonstrate specific facts showing that there is a genuine issue for trial." Defendants have not identified for the Court any specific facts that would controvert Plaintiffs material facts to demonstrate a genuine dispute exists. Defendants have filed a response in which they simply repeat allegations in their denials that:

- 1) "Defendant Barbara Buescher used the general practice for opening or setting up Certificates of Deposit or other accounts to deposit or hold collected pre-need funeral funds of advising the bank that a CD trust or other

irrevocable account needed to be set up for the funds,” (supported by Barbara Buescher’s own deposition and affidavit);

2) “In following that procedure, Defendants were merely doing it the way it had been done in the past, as this was the way the accounts were set up as of the time Defendant Buescher took over operation of the funeral home or business,” (Buescher’s deposition and affidavit);

3) “Defendant Buescher merely followed through with the same way her father had set up such accounts,” (Buescher’s deposition and affidavit);

4) “Most accounts were set up as irrevocable because the person funding the accounts had to apply for Medicaid or other assistance and if the money would have been placed in an irrevocable (sic) account, then they could have withdrawn the funds and that action would have an impact on their income,” (Buescher’s deposition and affidavit);

5) “The money had to be in an irrevocable account so there was no access to it or the money would make a difference on qualification for and amounts received for Medicaid,” (Buescher’s deposition and affidavit);

6) “Additionally, the irrevocable accounts were set up to avoid and (sic) issue of fraud with Medicaid,” (Buescher’s affidavit);

7) “Additionally, as testified to by the Cole County Public Administrator, the establishment of an irrevocable fund prevents someone for whom there will be a Medicaid issue from removing money”;

8) "There are certain limits on how much money can be kept by someone on Medicaid, however funds can be placed in an irrevocable burial plan," (Public Administrator's deposition);

9) "The money can not (sic) be removed because that would be defrauding Medicaid regardless of if the person were either alive or dead," (Public Administrator's deposition);

10) "As additional evidence of good faith, Certificates of Deposit for Defendants' business were funded 100% and Defendants generally did not keep the allowed 20%," (Buescher's deposition and affidavit);

11) "Defendants assumed in good faith that all of the business pre-need deposit accounts were properly set up, established and paid out," (Buescher's affidavit).

None of these allegations create a genuine issue of material fact in the record before the court, and actually constitute an admission by the Defendants that no steps were taken to establish a trust account or joint account. The Defendants' subjective thoughts and beliefs are immaterial sentiments, not material facts. Defendants' denials fail to create a genuine issue of material fact to overcome summary judgment.

Furthermore Rule 74.04(c)(2) states, "the response may also set forth additional material facts that remain in dispute, which shall be presented in consecutively numbered paragraphs and supported in the manner prescribed

by Rule 74.04(c)(1).” Defendants merely restated their response to each denial of Plaintiffs’ facts verbatim as their “additional material facts”, which are listed above. Defendants have failed to set forth any additional material facts to show a genuine dispute remains. The contents of Defendants’ response do not meet the standard required by Supreme Court Rule 74.04(c)(2), because Defendants have not identified any *material* facts that would create a genuine issue sufficient to survive partial summary judgment.

Supreme Court Rule 74.04(c)(6) provides that, “if the motion, the response, the reply and the sur-reply show that there is no genuine issue as to any material fact that the moving party is entitled to judgment as a matter of law, the court shall enter summary judgment forthwith.” As a result, this Court must accept the facts asserted by Plaintiffs as admitted for the purpose of the partial summary judgment motion, because they have not been specifically controverted by Defendants. Plaintiffs are entitled to judgment as a matter of law, because no genuine issue as to each of those facts exists; therefore, the following material facts are deemed admitted for the purpose of evaluating Plaintiffs’ Motion for Partial Summary Judgment.

III. Findings of Fact

1. Chris Koster is the duly elected, qualified, and acting Attorney General of the State of Missouri and brings this action in his official capacity pursuant to Chapters 333, 407, and 436, RSMo (Cum. Supp. 2011), and as

attorney of record for the Missouri State Board of Embalmers and Funeral Directors.

2. The Missouri State Board of Embalmers and Funeral Directors is an agency of the State of Missouri created and existing pursuant to §333.111, RSMo (2000), for the purpose of administering and enforcing provisions of Chapter 333, RSMo, and portions of Chapter 436, RSMo, and the Board's regulations adopted pursuant to these chapters.

3. Defendant Buescher Memorial Home, Inc. (the "Home") was a Missouri corporation that was administratively dissolved in 1996.

4. The Home transacted business primarily in Cole County, and is located at 429 E. Capital Ave., Jefferson City, Missouri 65101.

5. Defendant Barbara J. Buescher ("Buescher") is an individual and a Missouri resident who lives in Jefferson City, and was the funeral director of Buescher Memorial Home.

6. The Court finds, and Defendants admit, that Buescher entered into a preneed contract with each of the following consumers and deposited their preneed contract payments into the corresponding Central Bank certificate(s) of deposit:

- 1) Jonathan Boucher: Account No. 000205262
- 2) Anna Rita Clark: Account Nos. 00210262 and 00211461
- 3) Carol Klindt: Account No. 000205263
- 4) Bessie Foster: Account No. 000222155
- 5) James N. Graham: Account No. 000141772

- 6) Ina A Lindley: Account No. 000199506
- 7) Zella Lorber: Account No. 000213212
- 8) Emery Lee Northway: Account Nos. 000188368 and 000240655
- 9) Leona Laverne Northway: Account Nos. 000188371 and 000240654
- 10) Thomas P. Rose: Account No. 000141232
- 11) Keith L. Thompson: Account Nos. 000181501 and 000200755
- 12) Madeline Thompson Account Nos. 000222362 and 000223088
- 13) Sharon A. Thompson: Account Nos. 000181502 and 000200756
- 14) Clara E. Tremaine: Account No. 000164985
- 15) Patricia A. Tremaine: Account No. 000204138
- 16) Opal Wolz: Account No. 000246546
- 17) Linda Wilson: Account No. 000163334
- 18) Mary Comer: Account No. 000218825
- 19) Gerald Doug Davis: Account No. 000231230
- 20) Mary Lee Dearing: Account No. 000204137
- 21) Learntene Enlow: Account No. 000209959
- 22) Marvin C McDaniel: Account Nos. 000182268 and 000182269
- 23) Inga Nease: Account No. 000248595
- 24) Barbara M. Nichols: Account No. 000197799
- 25) Floyd E. Nichols: Account No. 000197798
- 26) Rose M. Schroeder: Account Nos. 000182270 and 000184056
- 27) Cynthia White : Account No. 000246372
- 28) Elsie Davis: Account No. 000191174
- 29) Norma Chloe Dobson: Account No. 000197800
- 30) Bob L. Duncan: Account No. 000181346
- 31) Gayla Ann Fry: Account Nos. 000188373 and 000188372
- 32) D. M. Gee, M. B Gray, Vera Marie Gray: Account Nos. 000166529, 000141775, and 000148011
- 33) Juanita C. Hendrick: Account No. 000184941, 000189880, and 000199505
- 34) Evelyn G. Kramer: Account Nos. 000184941 and 000189325
- 35) Florence Looten: Account No. 000209962
- 36) Carl Markway: Account No. 000200754
- 37) Helen Myer: Account No. 000183589
- 38) D. Niewald: Account No. 000141231
- 39) Florence Pack: Account No. 000179417
- 40) Robert J. Quigley: Account No. 000163963
- 41) Marjorie Richmond: Account No. 000144027
- 42) Patricia Schreiman: Account No. 000241246

- 43) Dorothy A Stock: Account No. 000124588
- 44) Marvin Stock: Account No. 000124587
- 45) Gladys Stoehr: Account No. 000176556 and 000233436
- 46) Charles J. Weiss: Account No. 000174256
- 47) George Enlow: Account No. 000209961
- 48) James R. Heriford: Account No. 000189715
- 49) Harry E. Maxey: Account No. 000248851
- 50) Mary C. Maxey: Account No. 000248854
- 51) Helen Morff: Account No. 000206286
- 52) Telka Nations: Account No. 000196952
- 53) David E. Shaw: Account No. 000146537
- 54) Rita P Wolfe: Account No. 000236184
- 55) Gracemary Gee: Account No. 000166527
- 56) Barbara S. Thompson: Account No. 000222154
- 57) Chester A. Holley: Account Nos. 000247460 and 000231231
- 58) Carol A. Stevenson: Account No. 000249121
- 59) Kenneth Stevenson: Account No. 000249122
- 60) Norma J. Duncan: Account No. 000181347
- 61) Ola Omega Henley: Account Nos. 000208068 and 000222153
- 62) Bennie Hicks: Account No. 000148010
- 63) Minnie Schneider: Account Nos. 000182852, 000197797, and 000208071

7. The certificates of deposit at Central Bank are in the name of Defendants only, and are titled "Buescher Memorial Home for [consumer's name]."

8. Each of the Central Bank certificates of deposit listed below is not a trust account or a joint account:

- 1) Account No. 000205262
- 2) Account No. 000210262
- 3) Account No. 000211461
- 4) Account No. 000205263
- 5) Account No. 000222155
- 6) Account No. 000141772
- 7) Account No. 000199506
- 8) Account No. 000213212

- 9) Account No. 000188368
- 10) Account No. 000240655
- 11) Account No. 000188371
- 12) Account No. 000240654
- 13) Account No. 000141232
- 14) Account No. 000181501
- 15) Account No. 000200755
- 16) Account No. 000222362
- 17) Account No. 000223088
- 18) Account No. 000181502
- 19) Account No. 000200756.
- 20) Account No. 000164985
- 21) Account No. 000204138
- 22) Account No. 000246546
- 23) Account No. 000163334
- 24) Account No. 000218825
- 25) Account No. 000231230
- 26) Account No. 000204137
- 27) Account No. 000209959
- 28) Account No. 000182268
- 29) Account No. 000182269
- 30) Account No. 000248595
- 31) Account No. 000197799
- 32) Account No. 000197798
- 33) Account No. 000182270
- 34) Account No. 000184056
- 35) Account No. 000246372
- 36) Account No. 000191174
- 37) Account No. 000197800
- 38) Account No. 000181346
- 39) Account No. 000188373
- 40) Account No. 000188372
- 41) Account No. 000166529
- 42) Account No. 000141775
- 43) Account No. 000148011
- 44) Account No. 000184941
- 45) Account No. 000189880
- 46) Account No. 000199505
- 47) Account No. 000184941
- 48) Account No. 000189325
- 49) Account No. 000209962

- 50) Account No. 000200754
- 51) Account No. 000183589
- 52) Account No. 000141231
- 53) Account No. 000179417
- 54) Account No. 000163963
- 55) Account No. 000144027
- 56) Account No. 000241246
- 57) Account No. 000124588
- 58) Account No. 000124587
- 59) Account No. 000176556
- 60) Account No. 000233436
- 61) Account No. 000174256
- 62) Account No. 000209961
- 63) Account No. 000189715
- 64) Account No. 000248851
- 65) Account No. 000248854
- 66) Account No. 000206286
- 67) Account No. 000196952
- 68) Account No. 000146537
- 69) Account No. 000236184
- 70) Account No. 000166527
- 71) Account No. 000222154
- 72) Account No. 000247460
- 73) Account No. 000231231
- 74) Account No. 000249121
- 75) Account No. 000249122
- 76) Account No. 000181347
- 77) Account No. 000208068
- 78) Account No. 000222153
- 79) Account No. 000148010
- 80) Account No. 000182852
- 81) Account No. 000197797
- 82) Account No. 000208071

9. The Court finds, and Defendants admit, that Buescher entered into a preneed contract with Norma Duncan and deposited some of her preneed contract payments into Central Bank business checking account, Account No. 10-2842-1.

10. The Central Bank business checking account, Account No. 10-2842-1, is not a trust account or a joint account.

11. The Court finds, and Defendants admit, that Buescher entered into a preneed contract with each of the following consumers and deposited their preneed contract payments into the corresponding Hawthorn Bank certificate(s) of deposit:

- 1) Jean E. Atkinson: Account No. 1007008
- 2) Betty Jean Clark: Account No. 1011413
- 3) Elizabeth Edwards: Account No. 1006234
- 4) Adele C. Graham: Account No. 1012445
- 5) Hilda Lauf: Account No. 1009197
- 6) Robert M. Malone: Account No. 1008970
- 7) Sara A Malone: Account No. 1009014
- 8) Maurice Markway: Account No. 1009200
- 9) Harry Nandory: Account No. 1012289
- 10) Mary Robinson: Account No. 1011155
- 11) Goldie Bolten: Account No. 1007007
- 12) Dorothy M. Dooley: Account No. 1007011
- 13) Nettie Harmon: Account No. 1004945
- 14) Helen Holt: Account No. 1011412
- 15) Dorothy Koelling: Account No. 1012290
- 16) Bessie Lutz: Account No. 1012288
- 17) Cletus Lutz: Account No. 1012287
- 18) Beatrice Muir: Account No. 1006168
- 19) Bernice Munsen: Account No. 1007363
- 20) Morris Munsen: Account No. 1007362
- 21) Michael O'Malley: Account No. 1011411
- 22) Muriel Rains: Account No. 1011154
- 23) Mae C. St. Clair: Account No. 1012444
- 24) Eiko Shaw: Account No. 1005870
- 25) Maxine C. Spackman: Account No. 1011414
- 26) Mary Ann Struempf: Account No. 1007010
- 27) Robert L. Wade: Account No. 1006081
- 28) Linda Diehl: Account No. 1007262
- 29) Ed J. Mertens: Account No. 1006080

- 30) Letta Vaught: Account No. 1011157
- 31) Ola Omega Henley: Account No. 1012225
- 32) Mary Languell: Account No. 1011153
- 33) Kenneth Bolten: Account No. 1007006
- 34) Othella Jobe: Account No. 1005706
- 35) Neva Raines: Account No. 1005716
- 36) Lenora Roundtree: Account No. 1012093

12. The certificates of deposit at Hawthorn Bank are in the name of Defendants only, and are titled "Buescher Memorial Home for [consumer's name]."

13. Each of the Hawthorn Bank certificates of deposit listed below is not a trust account or a joint account:

- 37) Account No. 1007008
- 38) Account No. 1011413
- 39) Account No. 1006234
- 40) Account No. 1012445
- 41) Account No. 1009197
- 42) Account No. 1008970
- 43) Account No. 1009014
- 44) Account No. 1009200
- 45) Account No. 1012289
- 46) Account No. 1011155
- 47) Account No. 1007007
- 48) Account No. 1007011
- 49) Account No. 1004945
- 50) Account No. 1011412
- 51) Account No. 1012290
- 52) Account No. 1012288
- 53) Account No. 1012287
- 54) Account No. 1006168
- 55) Account No. 1007363
- 56) Account No. 1007362
- 57) Account No. 1011411
- 58) Account No. 1011154
- 59) Account No. 1012444

- 60) Account No. 1005870
- 61) Account No. 1011414
- 62) Account No. 1007010
- 63) Account No. 1006081
- 64) Account No. 1007262
- 65) Account No. 1006080
- 66) Account No. 1011157
- 67) Account No. 1012225
- 68) Account No. 1011153
- 69) Account No. 1007006
- 70) Account No. 1005706
- 71) Account No. 1005716
- 72) Account No. 1012093

14. The Court finds, and Defendants admit, that Buescher entered into a preneed contract with each of the following consumers and deposited some of their preneed contract payments into Hawthorn Bank commercial checking account, PNIT Account No. 49131:

- 1) Letta Vaught
- 2) Anna Sullens
- 3) Myron Sullens
- 4) Kenneth Stevenson
- 5) Carol Stevenson
- 6) Rev. Chester Holley

15. The Hawthorn Bank commercial checking account, PNIT Account No. 49131, is not a trust account or a joint account.

IV. Conclusions of Law

1. Jurisdiction is properly vested with this Court under Art. V, § 14 Mo. Const.

2. Venue is proper in the Circuit Court of Cole County, Missouri, pursuant to §407.100.7, RSMo (2000), because the Defendants reside in Cole County, the alleged violations of §407.020, RSMo (Cum. Supp. 2011), §§436.005 – 436.071, RSMo (2000), and §§436.400 – 436.520, RSMo (Cum. Supp. 2011), occurred in Cole County, and Defendants have their principal place of business in Cole County.

3. This Court has subject matter and personal jurisdiction over the Defendants under Art. V, § 14 Mo. Const.

4. This Court has authority over this action pursuant to § 407.100, (2000), and §§ 436.485.2, 333.330.4, and 333.335.1, RSMo (Cum. Supp. 2011).

5. Because the certificates of deposit and checking accounts at Central Bank and Hawthorn Bank are not trust accounts, Defendants did not establish, as grantor, a preneed trust or trusts with terms consistent with §§436.005 to 436.071, RSMo (2000), for the preneed contract payments of the consumers listed in paragraphs 6, 8-9, 11, and 13-14 above.

6. Because the certificates of deposit and checking accounts at Central Bank and Hawthorn Bank are not joint accounts, Defendants did not establish, as grantor, a joint account or accounts in accordance with §436.053.1, RSMo (2000), for the preneed contract payments of the consumers listed in paragraphs 6, 8-9, 11, and 13-14 above.

7. The State is entitled to partial summary judgment on its claim of violation of the Merchandising Practices Act and the Preneed Funeral Contract Act as to preneed contract accounts because it has shown that (1) Defendants entered into preneed contracts with consumers and deposited their payments into certificates of deposit or checking accounts at Central Bank and Hawthorn Bank, (2) certificates of deposit and checking accounts are not trust accounts or joint accounts, and (3) Defendants failed to establish, as grantor, a preneed trust or trusts with terms consistent with §§436.005 to 436.071, RSMo (2000), or joint account(s) in accordance with §436.053.1, RSMo (2000). The Defendants' accounts for consumers' preneed money are not and were not trust accounts or joint accounts

8. No genuine dispute as to the material facts exists as to Count I, subparagraphs a. and b.; Count IV; and Count VI of Plaintiffs' March 24, 2010, First Amended Petition, and Plaintiffs are entitled to judgment as a matter of law.

V. Conclusion

For the reasons stated above, it is hereby ORDERED, ADJUDGED, AND DECREED that the State of Missouri's Motion for Partial Summary Judgment is granted and the Court shall enter judgment in favor of Plaintiffs as to Count I, subparagraphs a. and b., Count IV, and Count VI of Plaintiffs' First Amended Petition, and against Defendants.

Permanent Injunction

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, that Defendants and their owners, officers, directors, managers, agents, employees, and representatives, or any person or entity under Barbara J. Buescher's influence or control, are permanently enjoined and prohibited from:

1. Seeking licensure as a preneed seller pursuant to § 333.320.1, RSMo (Cum. Supp. 2011);

2. Engaging in the duties of a preneed seller, including receiving or obtaining any preneed funeral funds from consumers or currently held in trust or in life insurance policies, and holding preneed funds paid by a purchaser for a preneed contract, unless Defendants have already provided contracted for funeral services to the preneed purchaser;

3. Failing to return all payments made under the preneed contract together with interest at the rate of ten percent per annum to any purchaser, his heirs, or legal representative making an election to void the contract if the preneed contract does not comply with the provisions of § 436.425, RSMo (Cum. Supp. 2011), in accordance with § 436.425.2, RSMo (Cum. Supp. 2011);

4. Failing to distribute within fifteen (15) days of receipt of written notice of cancellation from the purchaser all payments made into trust under the contract, in accordance with § 436.456, RSMo (Cum. Supp. 2011);

5. Failing to collect and properly deposit or disburse all payments made by, or on behalf of, purchasers of preneed contracts, in accordance with § 436.415.2, RSMo (Cum. Supp. 2011); and

6. Holding out that the Defendants operate a funeral establishment when they do not hold such a license, including displaying a sign outside the home, answering the telephone as a funeral home, or otherwise communicating that Buescher Memorial Home is a licensed funeral establishment.

Transfer Remaining Preneed Accounts

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, that Defendants and their owners, officers, directors, managers, agents, employees, and representatives, or any person or entity under Barbara J. Buescher's influence or control, are ordered to:

1. Within fifteen (15) days of the Court's entry of this order, send written notice to each outstanding preneed purchaser, or their next of kin, whose funds are maintained by Defendants, or whose life insurance policies or annuities contain Defendants as the beneficiary or assignee, that Defendants cannot act as a preneed seller; and that the purchaser or next of kin is allowed to elect a licensed preneed seller to which to transfer his or her preneed contract and funds, or to receive a refund of the contract amount plus all interest thereon;

2. Transfer any outstanding preneed contracts and funds maintained by Defendants, in trust, joint-accounts, or otherwise, including life insurance policies or annuities to which Defendants are a beneficiary or assignee, to a licensed preneed seller or provider, or the purchaser's next of kin or estate within thirty (30) days of the entry of this order according to the purchaser's request, or if no request has been made within thirty (30) days of entry of this order or the purchaser cannot be located after a good faith attempt, Defendants must transfer all funds held by Defendants to Unclaimed Property of the State Treasurer within ten (10) days following the thirty-day notice and transfer period above.

Consumer Restitution

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, that Defendants have paid two hundred eighty-three thousand three hundred seventy-eight dollars and sixty-six cents (\$283,378.66) in restitution to consumers who had preneed contracts with Defendants, or to licensed preneed sellers or providers selected by the consumers, and who executed a Claim and Authorization form, along with the Defendants, through the Attorney General's Office.

Costs and Consumer Protection

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, that Defendants are liable for and ordered to pay the sum of twenty-four thousand

five hundred dollars (\$24,500), payable to the credit of the Merchandising Practices Revolving Fund to reimburse the Attorney General for costs incurred in the investigation and prosecution of this matter, administration of the restitution program in this matter, the enforcement of the Merchandising Practices Act, and to provide funds for consumer enforcement, education, and advocacy. Defendant shall pay this amount to the Attorney General in one lump sum in the form of a cashier's check, and shall be mailed, within thirty (30) days of the date that this judgment is entered in this case, to the Missouri Attorney General's Office, P.O. Box 899, Jefferson City, Missouri 65102.

Civil Penalties

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, that Defendants are liable for and ordered to pay the sum of five thousand dollars (\$5,000) pursuant to § 407.100.6, RSMo (Cum. Supp. 2011), as a civil penalty for failing to place consumers' preneed funds in a proper account in compliance with the preneed law, payable to the State of Missouri for the State Treasurer for distribution to the public schools as required by Article IX, section 7 of the Missouri Constitution. Defendant shall pay this amount in one lump sum in the form of a cashier's check, and shall be mailed, within thirty (30) days of the date that this judgment is entered in this case, to the Attorney General, P.O. Box 899, Jefferson City, Missouri 65102, who shall

then deliver the check to the Missouri State Treasurer.

Dismissal of Remaining Counts

Within seven (7) days of payment by the Defendants of the \$29,500 in costs and penalties stipulated and ordered to be paid by Defendants, The Attorney General's Office and the Missouri State Board of Embalmers and Funeral Directors shall dismiss with prejudice the remaining Counts against Defendants in Plaintiffs First Amended Petition, which consists of Count I, subparagraphs c. through h., Count II, Count III, Count V, and Count VII.

SO ORDERED this 14 day of September, 2012.


Honorable Byron L. Kinder
Circuit Judge

STATE OF MISSOURI } ss
COUNTY OF COLE

Clerk of the Circuit Court of Cole County, Missouri, hereby certify
that the above and foregoing is a full true and correct copy of

Order
as fully as the same remains of record in my said office.
IN WITNESS WHEREOF, I have hereunto set my hand and affixed
the seal of my said office this 14 day of Sept 2012


Clerk
Circuit Court of Cole County, Missouri